

INFORMATION BULLETIN NO. 68

SALES TAX

January 1998

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SUBJECT: State Educational Institutions

AUTHORITY: IC 6-2.5-4-6; IC 6-2.5-4-8; IC 6-2.5-5-16; IC 6-2.5-5-22; IC 6-2.5-5-24; IC 6-2.5-6-1; 45 IAC 2.2-5-24; 45 IAC 2.2-5-25; 45 IAC 2.2-5-46; 45 IAC 2.2-5-58

INTRODUCTION

This information bulletin is directed to those colleges and universities which are recognized as governmental agencies and were created by an Indiana statute.

ACTIVITIES OF STATE COLLEGES OR UNIVERSITIES

Indiana code, 6-2.5-4-8, provides, in relevant part, that:

An Indiana governmental entity, agency, instrumentality, or political subdivision (including a state college or university) is a retail merchant making a retail transaction when it performs private or proprietary activities that would constitute retail transactions under this article if those activities were performed by a retail merchant.

This section specifies that state colleges and universities act as retail merchants in respect to receipts derived from the conduct of private or proprietary activities.

For the purpose of this bulletin, the term “proprietary activities” is defined as activities generating revenues for state colleges or universities from the general public that are both customarily associated with the conduct of a private business enterprise, and are outside the scope of activities of governmental and educational functions as defined for state colleges or universities. Examples of proprietary activities include, but are not limited to, the following:

- 1) sales of merchandise, cards, clothing, toiletries, and other goods typically purchased in retail stores;
- 2) sales of textbooks by college and university bookstores;
- 3) sales of computer hardware, software and peripherals to the general public;
- 4) sales of athletic apparel and merchandise at intercollegiate athletic events and in retail operations
- 5) sales of catering and food services provided to the general public;
- 6) operation of hotels or other places of accommodations available to non-students.

The purpose for which state colleges and universities are granted exemption fall into four primary categories:

A) Teaching and instruction which involves educating citizens, businesses and institutions of the state through the use of conventional and electronic classroom facilities to provide:

- 1) courses which grant credit toward the attainment of an undergraduate or graduate degree;
- 2) post-graduate practical training and instruction in academic disciplines offered by state universities;
- 3) continuing education courses (non-credit);
- 4) professional development activities;
- 5) educational conferences, seminars and training meetings.

- B) Research which includes expanding the knowledge base of the citizens, businesses and institutions of the state of Indiana through scientific inquiry and dissemination of scholarly information. Activities associated with the fulfillment of this function include participation in laboratory and field research, the development and distribution of educational or research related tools or materials that are published, copyrighted or patented by a state college or university.
- C) Public service which includes activities that are consistent with other governmental and educational functions serviced by the state of Indiana, and other charitable, not-for-profit purposes for which the universities are granted exemption from Indiana gross income tax and federal income tax.
- D) Other university activities that are customarily undertaken in the conduct of governmental functions and which includes.
 - 1) sponsoring continuing education activities;
 - 2) operating the county extension service for the state;
 - 3) providing public access to intercollegiate athletic functions;
 - 4) providing public access to recreational and physical fitness facilities;
 - 5) providing public access to musical, theatrical, and artistic performances;
 - 6) providing access to informational and cultural events and productions; and
 - 7) recruiting and development activities including recruiting of students and faculty.

SALES BY STATE OF COLLEGES OR UNIVERSITIES

The following are examples of sales made by colleges or universities that are predominantly for educational purposes and are not subject to sales tax.

- 1) Indiana Code 6-2.5-5-22 exempts the sale of food by not-for-profit colleges or universities if the purchaser is a student at the college or university. The sale of food by third parties (private caterers, restaurants, licensees or other lessees operating on the campuses of the college or university) to students do not qualify for exemption as such sales are not made by a qualified not-for-profit educational organization. However, if the third parties are acting in agency capacity on behalf of the college or university, the exemption is applicable. The contracts with the third parties (private caterers, restaurants, licensees or other lessees operating on the campuses of the

college or university) must specifically designate the third party as an agent on behalf of the college or university. Furthermore, the third party food provider must be subject to the control of the university in connection with the selling of food to students. Sale of food to members of the faculty or other employees are subject to Indiana sales tax. Sales of food to non-students of that college or university do not qualify for exemption. Examples: Sale of food to a Ball State student visiting an Indiana University facility. Sales of food to elementary or secondary school students are subject to tax as IC 6-2.5-5-22 requires that the food be sold by the elementary school on its premises in order to qualify for the exemption.

For the purposes of this bulletin, the term “student” is defined to mean an individual enrolled or registered in courses which grant credit toward the attainment of an undergraduate or graduate degree or who is enrolled in an elementary or secondary school. Example: A high school student who is enrolled as a participant in a summer conference on a college or university campus is exempt from sales tax on meals provided to that student by the university or its agent on the campus premises. The term student includes any individual enrolled in remedial courses which are certified by the college or university.

Sales of educational materials, excluding books, stationery, or supplies, are exempt if sold to students as these sales are primarily intended to further the educational purpose of the college or university (Indiana Sales/Use Tax Regulation 45 IAC 2.2-5-58). The sale of cartographic, demographic or topographical maps or surveys required as part of the college or university’s operation of the “county extension service” is exempt from Indiana sales/use tax. The sale of such educational material if sold to the general public is subject to tax as these items would be taxable if sold by a retail merchant. Example: Sales of the Indiana Law Review to members of the faculty, staff and the general public are subject to tax. However, these sales may still be exempt as sales in interstate commerce or where the purchaser is entitled to an exemption of its own (e.g. governmental entity [public library]). If the purchaser is entitled to an exemption, the purchaser must supply the educational institution with a valid exemption certificate.

For the purposes of this bulletin, the term “educational materials” means materials which communicate information, graphic images or sound, that are utilized in teaching, instruction, or research. Educational materials may be in various forms of media, including but not limited to:

- 1) scholarly and professional journals, reviews, and papers;
- 2) research reports, papers, surveys, polling data and summaries;
- 3) books, guides and other printed instructional materials;
- 4) instructional audio and video materials; and
- 5) instructional software and computerized research tools.

The following are examples of sales made by colleges or universities that are subject to Indiana sales tax.

- 1) Sale of books, stationery, haberdashery, supplies or other property by an accredited college or university.
- 2) Sale of computers, software and related peripherals would be subject to tax unless sold to students and required to be purchased as part of an accredited curriculum.
- 3) Sale of food and drink at athletic, theatrical, artistic, cultural or informational events.
- 4) Receipts from the rental of accommodations for periods of less than thirty days to non-students are subject to Indiana sales tax and, if applicable, the county innkeepers tax. The term "accommodations" includes any room or rooms, lodgings in a commercial hotel, motel, inn, university memorial union, university residence hall, tourist camp or tourist cabin. The tax does not apply to any student renting lodging in a university residence hall while participating in a course of study for college credit at the college or university.
- 6) Sale of abandoned personal property if the property was not originally used in connection with the state educational institution's educational purpose.

PURCHASES BY STATE COLLEGES AND UNIVERSITIES

Transactions involving tangible personal property or service are exempt from sales tax if the person acquiring the property or service is a not-for-profit organization, primarily uses the property or service to carry on or to raise money to carry on its not-for-profit purpose, and is not an organization operated predominantly for social purposes. Furthermore, state colleges and universities are recognized as governmental agencies that qualify for the exemption under IC 6-2.5-5-16.

The following is an example of a purchase qualifying for exemption under the governmental exemption.

- 1) The purchase of food and beverage used predominantly in the performance of a governmental function such as recruiting students and faculty for a state educational institution if the purchase of food and beverage meets the following three requirements.

- a) The purchase must be invoiced directly to the state educational institution;
- b) The purchase must be paid for via government funds; and
- c) The purchase must be for a governmental function as described above.

TELECOMMUNICATIONS

Indiana Code 6-2.5-4-6, as amended effective July 1, 1993, provides that a person is a retail merchant making a retail transaction when such person furnishes or sells an intrastate telecommunication service.

State educational institutions would be required to collect Indiana sales tax when they furnish or sell an intrastate telecommunication service to students, members of the faculty or staff.

An example of this transaction would be the educational institution billing students and members of the faculty and staff for their respective long distance intrastate phone calls. Any charges billed directly to students or members of the faculty and staff for "local service charges" would also be subject to the collection of Indiana sales tax.

GENERAL INFORMATION

Indiana state educational institutions are required to remit any sales tax collected in accordance with the reporting periods discussed in IC 6-2.5-6-1.

Where the sales and use tax remitted in the prior calendar year does not exceed \$10 per month, the Indiana sales tax may be remitted annually.

Where the sales and use tax remitted in the prior calendar year does not exceed \$25 per month, the Indiana sales tax may be remitted semi-annually.

Where the sales and use tax remitted in the prior calendar year does not exceed \$75 per month, the Indiana sales tax may be remitted quarterly.

A retail merchant using a reporting period, other than monthly must file the sales/use tax return and pay the tax not later than the last day of the month following the close of that reporting period.

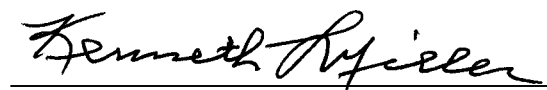
Where the sales and use tax remitted in the prior calendar year does not exceed \$1,000 per month, the Indiana sales tax must be remitted not more than 30 days after the end of the liability month.

Where the sales and use tax remitted in the prior calendar year exceeds \$10,000 (effective January 1, 1998) the retail merchant shall pay the sales/use tax by electronic fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department not later than 20 days after the end of the liability month.

STUDENT ORGANIZATIONS AT STATE COLLEGES AND UNIVERSITIES

Student organizations are informal student clubs, whose membership consists of students who share a common interest in the particular cause or activity that the organization exists for, promotes or furthers. To be exempt from sales tax the student organization must be recognized by the college university, connected with the state college or university and under the supervisions of the college or university. Furthermore, the student organization's records must be maintained by the university as an "agency" account.

A student organization that is registered with and under the control of the college or university will not be required to register with the Indiana Department of Revenue as a not-for-profit organization. It will be considered a part of the college or university.

A handwritten signature in black ink, reading "Kenneth L. Miller", written over a horizontal line.

Kenneth L. Miller
Commissioner